

FILED
JUL 27 2010

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

HOWARD WAGNER
CIRCUIT CLERK

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
OF MISSOURI, AT HILLSBORO, JEFFERSON COUNTY, MISSOURI

CITY OF ARNOLD, MISSOURI)

Plaintiff,)

v.)

MKG CONSTRUCTION, INC.,)

Registered Agent:)

Kent Grab)

697 Peartree Lane, Suite B)

Arnold, MO 63010)

&)

WASHINGTON INTERNATIONAL)

INSURANCE COMPANY)

Serve at:)

John M. Huff)

Director of Insurance of State of Missouri)

301 West High Street, Room 530)

Jefferson City, MO 65101)

Defendants.)

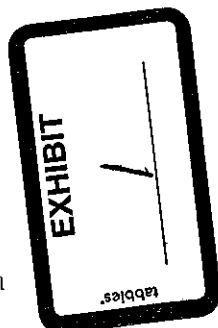
Cause No.: 10JE-CC00656

Division No.:

PETITION IN INTERPLEADER

COMES NOW Plaintiff, The City of Arnold, Missouri, (hereinafter "Arnold"), and for
its Petition in Interpleader states as follows:

1. Plaintiff is a third-class city in the County of Jefferson, State of Missouri.
2. Defendant, MKG Construction, Inc., ("MKG") is an administratively dissolved Missouri Corporation.
3. Pursuant to Subdivision 2 of Section 351.476, RSMo., the "[d]issolution of a corporation does not: ... (5) Prevent commencement of a proceeding by or against the corporation



in its corporate name....”.

4. Defendant Washington International Insurance Company (“Washington International”) is a foreign corporation that does business in Missouri.

5. Plaintiff has two contracts with MKG whereby MKG was to perform construction work related to Church Road near Missouri Route 141, Big Bill Road, Old Lemay Ferry, and Missouri State Road, in the city of Arnold, Missouri.

6. Pursuant to a general indemnity agreement between Washington International and MKG, Washington International would serve as the surety insuring MKG’s performance of the above-referenced work pursuant MKG’s contracts with Arnold.

7. The agreement between MKG and Washington International provided that in the event of a default, breach, or failure by MKG, as defined in the general indemnity agreement, that MKG assigned, transferred, pledged, and conveyed to Washington International all of its rights under its contracts with Arnold.

8. Washington International did become involved in the projects aforementioned.

9. Washington International asserts that it has expended Two Hundred Sixty-Four Thousand Six Hundred Seventy Dollars and Seventy-Five Center (\$264,670.75) as a result of claims filed by MKG’s subcontractors against the payment bonds issued by Washington International on the above-described projects.

10. Arnold currently holds retainage monies in the amount of approximately Ninety-Six Thousand Eight Hundred Twenty Dollars (\$96,820.00) for the above-described projects.

11. Washington International has demanded payment of the retainage monies citing its agreement with MKG, whereby MKG, in the event of default, assigned its rights under the

contracts with Arnold.

12. Arnold has received no consent from MKG to release the retainage monies to Washington International.

13. Arnold is ready, willing, and able to pay the retainage amounts owing under the contracts with MKG, but because it has received no consent to pay those monies over to Washington International, from MKG, it is uncertain as to which party is entitled to payment.

14. Because of these conflicting claims, and because of this uncertainty, Arnold is exposed to potential multiple liability.

15. Arnold hereby offers to pay into the Court the retainage amounts due and owing under its contracts with MKG, as and in the event the Court directs.

WHEREFORE, Plaintiff, the City of Arnold, Missouri, prays for judgment against the Defendants as follows:

1. That Defendant MKG Construction, Inc., and Defendant Washington International Insurance Company be required to appear and interplead their claims to the sums due and owing under the City of Arnold's contracts with MKG Construction, Inc., as described above;

2. That upon payment into the Court of the sums due and owing under those contracts, the City of Arnold be discharged from any further liability to either Defendant MKG Construction, Inc., or Defendant Washington International Insurance Company;

3. That the City of Arnold be awarded the costs of this action incurred herein, including reasonable attorney's fees;

4. For such other and further orders and relief as the Court may deem just and proper given the circumstances.

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By 
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